

AMENDED IN ASSEMBLY MARCH 28, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2253

Introduced by Assembly Member Hancock

February 22, 2006

An act to add Section 23112.7 to the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2253, as amended, Hancock. Vehicles: Illegal dumping.

Existing law prohibits the dumping of various matters upon the highways.

This bill would authorize the seizure and civil forfeiture of a vehicle used for the illegal dumping of waste matter, as defined, on public or private property and would establish procedures for the seizure and civil forfeiture of the vehicle, including the provision of: (1) a notice of seizure to the person in possession of the seized vehicle, and to the legal and registered owners of the vehicle; (2) a ~~post-seizure~~ *post seizure* probable cause hearing; and (3) a notice of forfeiture, if probable cause is demonstrated. The bill would provide for the return of the vehicle to the owner under specified circumstances.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 23112.7 is added to the Vehicle Code,
2 to read:

1 23112.7. (a) A motor vehicle used for illegal dumping of
2 waste matter on public or private property is subject to seizure
3 and civil forfeiture.

4 (b) For the purposes of this section, the following terms have
5 the following meanings:

6 (1) “Illegal dumping” means the willful or intentional
7 depositing, dropping, dumping, placing, or throwing of any waste
8 matter onto public or private property that is not expressly
9 designated for the purpose of disposal of waste matter. “Illegal
10 dumping” does not include the discarding of small quantities of
11 waste matter related to consumer goods and that are reasonably
12 understood to be ordinarily carried on or about the body of a
13 living person, including, but not limited to, beverage containers
14 and closures, packaging, wrappers, wastepaper, newspaper,
15 magazines, or other similar waste matter that escapes or is
16 allowed to escape from a container, receptacle, or package.

17 (2) “Waste matter” means any form of tangible matter
18 described by any of the following:

19 (A) All forms of garbage, refuse, rubbish, recyclable materials,
20 and solid waste.

21 (B) Dirt, soil, rock, decomposed rock, gravel, sand, or other
22 aggregate material.

23 (C) Abandoned or discarded furniture; or commercial,
24 industrial, or agricultural machinery, apparatus, structure, or
25 other container; or a piece, portion, or part of these items.

26 (D) Hazardous waste as that term is defined in Section 25117
27 of the Health and Safety Code.

28 (E) All forms of liquid waste not otherwise defined in or
29 deemed to fall within the purview of Section 25117 of the Health
30 and Safety Code, including, but not limited to, water-based or
31 oil-based paints, chemical solutions, water contaminated with
32 any substance rendering it unusable for irrigation or construction,
33 oils, fuels, and other petroleum distillates or byproducts.

34 (F) Any form of biological waste not otherwise designated by
35 law as hazardous waste, including, but not limited to, body parts,
36 carcasses, and any associated container, enclosure, or wrapping
37 material used to dispose these matters.

38 (G) A physical substance used as an ingredient in any process,
39 now known or hereafter developed or devised, to manufacture a
40 controlled substance specified in Section 11054, 11055, 11056,

1 11057, or 11058 of the Health and Safety Code, or that is a
2 byproduct or result of the manufacturing process of the
3 controlled substance.

4 (c) A peace officer, *or officer of a local authority*, who seizes
5 a vehicle used for illegal dumping of waste matter shall provide a
6 notice of seizure to the person from whose possession the vehicle
7 was seized. A notice of seizure shall include a description of the
8 seized vehicle, including its make, model, license plate number,
9 and vehicle identification number; the location, authority, and
10 reason for the seizure of the vehicle; and a statement describing
11 the opportunity for a post-seizure probable cause hearing.

12 (d) A law enforcement agency *or local authority*, that seizes a
13 vehicle shall promptly ascertain from the Department of Motor
14 Vehicles the names and addresses of all legal and registered
15 owners of the vehicle, and shall send to each owner a notice of
16 seizure.

17 (e) The legal and registered owner of a seized vehicle shall be
18 provided with the opportunity for a post-seizure hearing within
19 three business days of the date of the seizure to determine
20 whether there was probable cause to believe the vehicle was used
21 for illegal dumping of waste matter. A *post-seizure* probable
22 cause hearing shall be conducted pursuant to the procedures of
23 Section 22852. *At the postseizure probable cause hearing, if it is*
24 *determined that there is a community property interest in the*
25 *vehicle, at the time of the illegal dumping of waste matter there*
26 *was a community property interest in the vehicle, and the vehicle*
27 *is the only vehicle available to the registered owner's immediate*
28 *family, than the agency that seized the vehicle shall give special*
29 *consideration in deciding whether to issue a notice of forfeiture.*

30 (f) The legal and registered owner of a seized vehicle shall be
31 provided with a notice of forfeiture within five business days of
32 the seizure, unless no probable cause for the seizure was found
33 following a post-seizure probable cause hearing conducted
34 pursuant to subdivision (e). The notice of forfeiture shall inform
35 the owner that the vehicle will be declared a public nuisance and
36 forfeited to the city or county, upon a written declaration of
37 forfeiture, and will be sold or otherwise disposed of unless a
38 timely claim is filed within 30 business days. The notice of
39 forfeiture shall include instructions for filing a claim with the city
40 or county.

1 (g) Upon the filing of a claim opposing the forfeiture, the city
2 or county shall file a petition for forfeiture with the superior court
3 within 30 business days of the receipt of claim.

4 (h) Upon the filing of a petition for forfeiture, the proceeding
5 shall be set for trial. The trial shall be a civil in rem proceeding
6 directed at the vehicle. At trial, the city or county shall have the
7 burden of proof by a preponderance of the evidence that the
8 vehicle was used in the illegal dumping of waste matter.

9 (i) A forfeited vehicle shall be sold or otherwise disposed of
10 upon the issuance of a declaration of forfeiture unless a petition
11 for forfeiture is filed, or the issuance of an order of forfeiture by
12 the superior court.

13 (j) A seized vehicle shall be returned to the registered owner
14 upon a showing of any of the following:

15 (1) The vehicle was stolen.

16 (2) The vehicle is owned by a bona fide rental car agency.

17 (3) The vehicle is owned by the employer of the person who
18 committed the illegal dumping of waste matter and the use of the
19 vehicle was ~~not~~ made without the employer's knowledge and
20 consent, and did not provide a direct benefit to the employer's
21 business.

22 ~~(4) There is a community property interest in the vehicle, and~~
23 ~~at the time of the illegal dumping of waste matter, the vehicle is~~
24 ~~the only vehicle available to the registered owner's immediate~~
25 ~~family that may be operated with a class C driver's license, and~~
26 ~~the community property interest owner requests the release of the~~
27 ~~vehicle.~~

28 (k) The proceeds of the sales of a forfeited vehicle may be
29 used to recover all costs made, incurred, or associated with the
30 seizure and forfeiture of the vehicle, and to recover all costs
31 made, incurred, or associated with the abatement of the waste
32 matter dumped from the seized vehicle.